

EXHIBIT 59

Thomas Weber, Esquire

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES JOSEPH FREITAG,	:	NO. 2:19-cv-05750-JMG
JR., as Administrator of	:	
the ESTATE OF CHARLES	:	
JOSEPH FREITAG, SR.,	:	
Plaintiff	:	
	:	
vs.	:	
	:	
BUCKS COUNTY; PRIMECARE	:	CIVIL ACTION - LAW
MEDICAL, INC.; STEPHAN	:	
BRAUTIGAM, PMHNP;	:	
JESSICA MAHONEY, PSY.D.;	:	
AVIA JAMES, LPC;	:	
CHRISTINA PENGE, LPC;	:	
CORRECTIONAL OFFICER	:	
MOODY; CORRECTIONAL	:	
OFFICER MURPHY; and	:	JUDGE JOHN M. GALLAGHER
CORRECTIONAL OFFICER	:	
YOUNG,	:	
Defendants	:	

ZOOM DEPOSITION OF THOMAS WEBER, ESQUIRE

DATE AND TIME: Wednesday, June 9, 2021
at 2:30 p.m.

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1 MR. NINOSKY: Object to the form, but you
2 can answer.

3 THE WITNESS: No.

4 BY MR. FEINBERG:

5 Q. That's a segue into the substantive
6 issues that we want to address today on mental healthcare
7 staffing.

8 And let's do this. I think the best way
9 to get into this topic is for me to show you some of the
10 records here. I know you did -- you did not review any
11 of the medical records or mental healthcare records
12 before today's deposition. Is that correct?

13 A. That's correct.

14 Q. All right. I'll put in front of you now
15 what has previously been marked as Exhibit P-23. Do you
16 have it in front of you, sir?

17 A. I do.

18 Q. All right. This is a 305-page document
19 containing the entire medical and mental health chart for
20 Mr. Freitag. And what I'm going to do now is show you
21 Page 141. And before I show you the specific document,
22 let me note that, just to save time, Mr. Freitag came
23 into the facility on June 4th after he was convicted by a
24 jury. His sentencing was scheduled for August 24th. Do
25 you understand those -- that time frame?

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1 A. Yes.

2 Q. All right. So I'm showing you here a
3 note from -- created by Jessica Mahoney on June 15th of
4 2018. Do you see what I have highlighted, sir?

5 A. Yeah. I wouldn't call it a note but,
6 yes.

7 Q. Yeah. I have highlighted text. This is
8 the -- I believe, the task section of the chart. Is that
9 right?

10 A. That's correct.

11 Q. All right. And what's -- what is noted
12 in this record that I have highlighted is that Dr.
13 Mahoney created an appointment for August 27th, 2018,
14 which reads: MH FU after trial. I understand that to be
15 mental health follow-up after trial. Does that sound
16 right to you, sir?

17 A. Yes.

18 Q. Now, that's the scheduling. Let me show
19 you the encounter that led to that scheduling. And for
20 this I'm going to 268 -- no, I'm sorry, that's actually
21 the same thing. Bear with me for one moment.

22 All right. I'm now at Page 111, and we
23 have here a note from June 15th of 2018 -- I'm sorry.
24 My PDF application is giving me problems here. Bear
25 with me for one moment.

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1 Here's what I'm gonna do. I'm gonna
2 close this document, sir, so bear with me for one
3 second. These are the problems we face when I can't
4 share a paper with you. Okay. I should be able to
5 re-share this with you.

6 We have got Exhibit P-23 up. Do you have
7 that on your screen, sir, the top of Page 112?

8 A. Okay, yes.

9 Q. Okay. I'm showing you Dr. Mahoney's note
10 and highlighting here, at the bottom of Page 111, he,
11 referring to Mr. Freitag, discussed wanting mental health
12 to follow up after he goes to court in August. Do you
13 see that, sir?

14 A. Yes.

15 Q. And then Dr. Mahoney notes: Mental
16 health to follow up as per protocol. Do you see that,
17 sir?

18 A. Yes.

19 Q. Now, my understanding from Dr. Mahoney's
20 testimony and also Dr. Cassidy's testimony, is that if
21 Mr. Freitag was gonna be going to court on August 24th,
22 which was a Friday. The next available appointment for
23 him to be seen by mental health staff would have been on
24 Monday, August 27th.

25 First of all, do you understand the

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1 timelines that I've outlined?

2 A. Yes.

3 Q. Second, is that consistent with your
4 understanding of what the practice was at Bucks County in
5 that time frame?

6 MR. NINOSKY: Object to the form.

7 THE WITNESS: Yes.

8 BY MR. FEINBERG:

9 Q. My understanding from Dr. Cassidy, in
10 particular, in her testimony is that mental health staff
11 would leave the facility by 4:00 p.m. Is that your
12 understanding as well?

13 A. That was when their -- yeah, their
14 workday would end. Yes.

15 Q. All right. So their workday was -- I
16 forget the start time -- but 6:30 or 7:00 a.m. Does that
17 sound right?

18 A. I think it's 6:00 to 4:00, was 6:00 to
19 4:00.

20 Q. So after 4:00 p.m. Monday through Friday
21 there would be no mental health staff in the facility;
22 correct?

23 A. Correct.

24 Q. And Friday 4:00 p.m. until Monday 6:00
25 a.m. there are no mental health staff in the facility.

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1 Q. Okay. Fair to say several years before
2 2018. Is that right?

3 A. Correct. We were -- there was a period
4 of time where we were just providing the medical side of
5 the house.

6 Q. And the mental healthcare was provided by
7 another entity. Is that correct?

8 A. That is correct.

9 Q. And was it March of 2018 when PrimeCare
10 was asked to handle the mental healthcare?

11 A. We were asked prior to March of '18 and
12 that's when we assumed to provide the care.

13 Q. Yeah, understood. I assume there were
14 negotiations over the contract and so on and then that
15 was executed or finalized with the start date in March of
16 2018; correct?

17 A. Correct.

18 Q. So you mentioned that PrimeCare made
19 recommendations about numbers of staff. Can you give me
20 some of the specifics on that. What were the
21 recommendations that were made?

22 A. I think we added one full-time mental
23 health clinician.

24 Q. Would that have been someone as a -- at
25 the LPC level?

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1 A. Yes.

2 Q. Did PrimeCare make any recommendations
3 about the hours at which mental health staff would be
4 available?

5 A. Not at that time, no.

6 Q. Were those -- were the hours for
7 availability of mental healthcare staff the subject of
8 any negotiations?

9 A. No.

10 Q. Well, for example, did the County put out
11 an RFP for mental healthcare?

12 A. No.

13 Q. This was part of ongoing -- an ongoing
14 business relationship. Is that how it worked?

15 A. Yeah. The -- the Director of the
16 Department of Health there, you know, had seen our
17 operations on the medical side. He perceived some
18 utility from combining the services for coordinated
19 care, approached us and asked if we would be willing to
20 do so. And after some period of time, you know, we
21 agreed and then were able to come to terms and start the
22 care.

23 Q. Who is the director from the County?

24 A. Dr. Damsker, David.

25 Q. D-A-M-S-K-E-R?

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1 A. I believe so.

2 Q. Let me ask it this way. Do you recall
3 personally -- strike that.

4 In the course of these negotiations I
5 assume PrimeCare became aware of what hours mental
6 healthcare staff would be expected to work. Is that
7 correct?

8 MR. SCOTT: Objection.

9 THE WITNESS: Yes.

10 BY MR. FEINBERG:

11 Q. The hours being 6:00 to 4:00, Monday
12 through Friday; correct?

13 A. Yes.

14 Q. At any time did you personally raise any
15 concerns that that may not provide enough coverage for
16 mental healthcare needs of prisoners?

17 MR. NINOSKY: Object to form.

18 THE WITNESS: No. It's --

19 BY MR. FEINBERG:

20 Q. Did anyone within PrimeCare --

21 A. -- rather exhaustive coverage.

22 Q. Yeah. I spoke over you, Mr. Weber, so if
23 you could just repeat your answer.

24 A. No. I mean it's rather exhaustive
25 full-time coverage.

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1 Q. Did anyone raise any concerns about the
2 availability -- anyone within PrimeCare raise any
3 concerns about the hours at which mental healthcare would
4 be available?

5 A. No.

6 Q. Did anyone from the County make any
7 suggestions that mental healthcare staff -- it would be
8 helpful to have mental healthcare staff available for
9 longer time periods during the day or during the weekend?

10 A. I don't believe so, no.

11 Q. Did anyone, PrimeCare or Bucks County,
12 ever raise any concerns that having mental healthcare
13 staff leave at 4:00 p.m. would prevent mental healthcare
14 staff from being available when people returned from
15 court?

16 MR. NINOSKY: Object to the form.

17 THE WITNESS: No.

18 BY MR. FEINBERG:

19 Q. Was there -- so, in sum, it sounds like
20 there was no consideration at that time, any time before
21 August of 2018, of having mental healthcare staff in the
22 building after 4:00 p.m. Is that correct?

23 A. That's correct.

24 Q. In the -- I guess nearly -- well, 80 as
25 of next week, facilities where PrimeCare has a contract

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1 --

2 MR. NINOSKY: Jon, you have to start it
3 again. You froze on us again.

4 MR. FEINBERG: I've gotta do something
5 about this internet connection. Okay. Is that better?
6 Lori, can you hear me all right?

7 COURT REPORTER: Yeah, I can hear you.
8 You just broke a little bit.

9 MR. FEINBERG: I'm in the middle of the
10 fifth largest city in the country. You'd figure I'd be
11 able to get decent internet service.

12 BY MR. FEINBERG:

13 Q. Okay. Mr. Weber, at any of the other
14 facilities where PrimeCare has contracts are there any
15 arrangements made to allow -- that would ensure the
16 availability of mental healthcare staff when people
17 return from various court dates?

18 MR. NINOSKY: And you're talking about
19 availability in person in the facility at the time,
20 correct, Jon, not --

21 MR. FEINBERG: Correct.

22 MR. NINOSKY: -- not the on-call setup
23 which is available at all these facilities?

24 MR. FEINBERG: Correct.

25 MR. NINOSKY: Okay. You can answer Tom.

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1 THE WITNESS: There are other facilities
2 that have different hours of operation including
3 facilities that don't have coverage every day of the
4 week. Some facilities have coverage that goes beyond
5 4:00 and 5:00 o'clock. It was not established to ensure
6 availability of mental health for people who returned
7 from court.

8 BY MR. FEINBERG:

9 Q. Okay. So it sounds like that's if -- I
10 want to make sure I'm understanding correctly. At other
11 facilities if they have people who are available at a
12 later time period it's an artifact of the way scheduling
13 works there and not specifically tied to return from
14 court. Is that correct?

15 A. Correct.

16 Q. All right. Now, my understanding is that
17 at sometime between August of 2018 and the present there
18 was a change in staffing in -- for mental healthcare at
19 Bucks County. Is that correct?

20 MR. NINOSKY: Object to form, but you can
21 answer.

22 THE WITNESS: That is correct.

23 BY MR. FEINBERG:

24 Q. All right. What was that change?

25 A. Hours were -- in the day were increased

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1 we're talking about would have been in place as of
2 December of 2019. Your best recollection is that it was
3 early that year, early 2019?

4 A. First -- first three or four months we
5 probably -- I mean, we would have conducted a review
6 approaching the anniversary of the start of the service
7 to see, you know, what modifications can be made or
8 should be made. So that's my best recollection as to
9 when something like this would be implemented.

10 Q. Who made the decision to change the
11 hours?

12 A. It would have been a collaborative
13 effort amongst myself, Todd, with insight given to us by
14 Dr. Cassidy and, perhaps, Dr. Scordellis to the extent,
15 you know, she had direct interaction and supervision
16 down there.

17 Q. Why was the change made?

18 A. With the -- with the addition of an
19 additional person we found that -- you know, any time in
20 a correctional facility there are windows in which you
21 can get patients. You know, you have to compete with
22 the medical provider call, the dental provider call.

23 We had more individuals and it was
24 perceived that, you know, you could run into a situation
25 where -- you know, in the trades they'd call it staffing

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1 where you're not getting the most efficiency out of the
2 staff that you have there, so spread it out a little
3 further, provide, you know, a little bit more coverage
4 area in which people can operate.

5 Q. Okay. So with an additional person -- I
6 understood you to have said and maybe -- let me just
7 confirm.

8 When you said before that PrimeCare
9 recommended to the County adding an additional
10 clinician, did that occur at the time the service
11 initiated in March of 2018?

12 A. Yeah. It's not that we recommended an
13 additional person, but when we were asked to give a
14 proposal our proposal included that, you know, here is
15 the package of what we're gonna provide and that
16 included an additional individual.

17 Q. So in 2019 was there another person added
18 or was it, looking backwards over the course of the
19 year --

20 A. It was --

21 Q. -- an additional person?

22 A. Yeah. It's looking backwards over that
23 year. Did -- did we get the most utility out of an
24 extra body there or, you know, is it possible to have
25 someone free up and provide a little extended coverage.

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1 Q. Was there any relationship between this
2 decision and a specific desire to have mental healthcare
3 staff available for when prisoners returned from court?

4 A. No.

5 Q. Did that ever come up in any
6 conversation?

7 A. No.

8 Q. Do you know whether --

9 A. Not that I -- not that I am aware of or
10 participated in.

11 Q. Okay. And do you know whether, under
12 current practices -- and, by the way, I assume the
13 practice that you've described as being adopted in early
14 2019 is still in place as of today. Is that correct?

15 A. In terms of -- you're talking about the
16 hours of coverage provided?

17 Q. Yes.

18 A. Yes.

19 Q. Are you aware at this point or any time,
20 really, since early 2019 and the present whether that
21 change in hours has resulted in a change in practices for
22 seeing people on return from court?

23 A. I do not know that.

24 Q. Was there -- and this may be -- I fully
25 expect the answer will be no given your previous

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1 BY MR. FEINBERG:

2 Q. Yeah. All right. I've got to remember
3 what the question was. Is there -- I think it's this.
4 Is it correct then, sir, that there is no contractual
5 provision or any other rule that you're aware of which
6 would have prevented PrimeCare from making the staffing
7 change before it actually happened?

8 MR. NINOSKY: Object to the form.

9 THE WITNESS: Given the caveat that we
10 would let them know beforehand -- and I guess they could
11 object and say, you know, that's during meal time,
12 everyone is gonna be on lockdown so there's no use doing
13 it -- but there's no impediment or policy that doesn't
14 allow us to propose and sell that change.

15 BY MR. FEINBERG:

16 Q. And it sounds like -- you talked about
17 that meal time -- that's speculating about a concern that
18 the County would raise. Is that correct?

19 A. We -- we encounter that at times, count,
20 meal time. There are certain times throughout the day
21 that you know you're not going to get patients so you do
22 more administrative work during those windows so....

23 Q. When the change was made in early 2019,
24 whenever it was, there was no objection from the County.
25 Is that correct?

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1 A. That's correct.

2 Q. Are you aware of any audits or studies
3 that have been done since this change was made, which
4 would document how many people are seen in that time
5 period between 4:00 and 5:00 p.m. by mental healthcare
6 staff?

7 A. No, I am not aware of any studies. I am
8 just thinking about our EMR and whether -- I assume the
9 data can be pulled, but I'm unaware of any studies.

10 Q. And really what I'm getting at is this,
11 Mr. Weber, is that, you know, once the change was made
12 has anyone gone back and looked to decide -- to see, was
13 this an effective use of resources now that we've made
14 this change? Do you know of anything like that?

15 A. Not any actual statistical review.

16 Q. Have you heard any, at least anecdotally,
17 any discussion from the mental health staff or anyone
18 else at PrimeCare corporate on this topic?

19 A. It was viewed as, you know, a positive
20 change at the time it occurred, and I have not heard
21 anything that says that change, that view of how it
22 would work, has changed to the negative.

23 Q. You used the passive voice to describe
24 how it was viewed -- and that's not a critique -- so my
25 question is who -- who informed you that it was viewed

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1 positively?

2 A. I remember at or around the discussions
3 of having it that, yes, this is a good idea. Everyone
4 seemed to be onboard and no one has raised an objection
5 after it was implemented.

6 Q. With that, Mr. Weber, I don't have any
7 further questions for you. I defer to County Counsel.

8 BY MR. SCOTT:

9 Q. Mr. Weber, it's Jeffrey Scott. You had
10 used a term exhaustive full-time coverage. Do you
11 remember that testimony?

12 A. Yes.

13 Q. What does that mean in the mental health
14 field?

15 A. Well, in the correctional healthcare
16 facility we are happy that an individual is gonna see a
17 mental health clinician much more quickly in one of our
18 facilities than they will in the community.

19 And at Bucks County we have a full
20 complement of mental health clinicians there over -- I
21 mean, when you talk billets it's well over, you know, 40
22 hours -- they have 40 hour -- more than 40 hours a week
23 coverage as well as multiple individuals there to
24 address the needs and concerns of our patient base.

25 That is a exhaustive or extensive --

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1 maybe exhaustive is the wrong term -- but it's an
2 extensive coverage base in correctional healthcare.

3 MR. SCOTT: All right. That's all the
4 questions I had.

5 BY MR. NINOSKY:

6 Q. And, Mr. Weber, math has never been my
7 strong point, as you know, but even in June of 2018 the
8 amount of hours or billets of mental healthcare would
9 have exceeded 40 hours a week; correct?

10 A. Yeah. The billets certainly do and the
11 6:00 to 4:00 coverage does. And moving to 5:00 based
12 upon, you know, court transports -- I mean, most courts
13 don't end until 4:00 or 4:30 so, unfortunately, the move
14 to 5:00 doesn't guarantee that we would have had the
15 opportunity to see Mr. Freitag when he came back from
16 court.

17 So, you know, I've been involved in
18 trials that have ended at 8:00 o'clock at night and
19 someone could be convicted and come back at that point.

20 You know, there is, unfortunately, not a
21 way to guarantee, unless you're gonna have coverage
22 24/7, that when someone returns or is in -- brought into
23 the facility with high profile charges that they can be
24 seen immediately or that same day.

25 MR. NINOSKY: Nothing further.

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1 MR. SCOTT: I'm sorry, I have one more
2 follow-up.

3 BY MR. SCOTT:

4 Q. There was a mention of on-call. What is
5 the on-call availability of the mental health
6 professional, should it -- should it be needed?

7 A. 24/7.

8 Q. And --

9 A. Mental health clinicians as well as
10 those with prescriptive authority. If someone needs a
11 prescription, that can be obtained at any hour as well.

12 MR. SCOTT: Thank you. That was my last
13 question. Thank you.

14 MR. NINOSKY: Jon, anything further or
15 are you done?

16 MR. FEINBERG: Give me one moment.

17 BY MR. FEINBERG:

18 Q. Yeah, let me -- Mr. Weber, a follow-up to
19 Mr. Ninosky's question of just a moment ago about return
20 from court.

21 I'm gonna put Dr. Cassidy's deposition
22 testimony back in front of you. I'm at Pages 103 to
23 104.

24 And I'll represent to you that, leading
25 up to the bottom of 103 where there's some highlighted